

LS-9243

Page 1 of 11

16 August 1954

OGC Has Reviewed

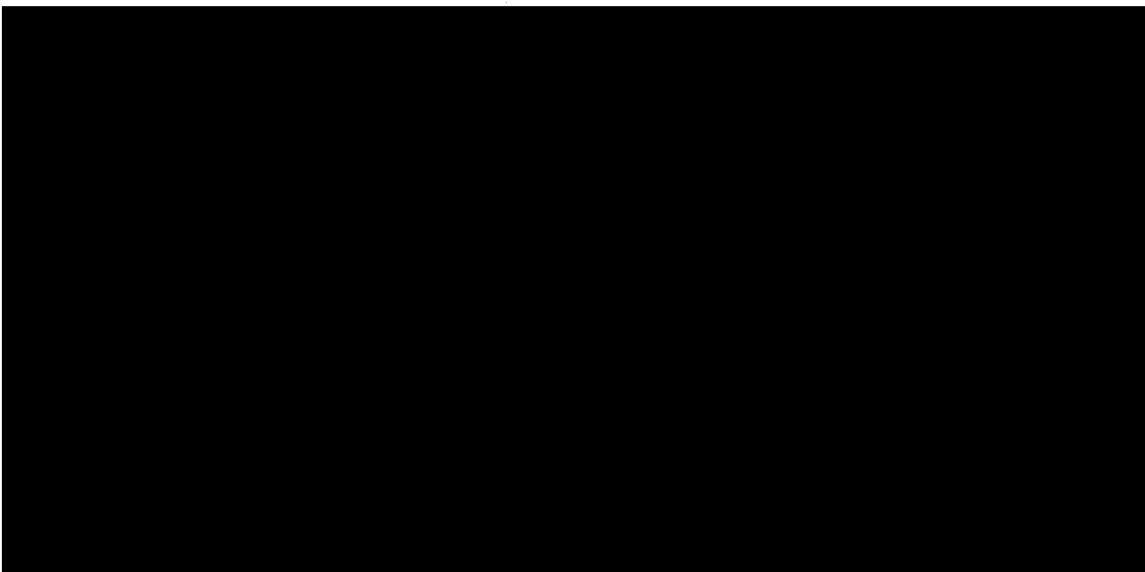
MEMORANDUM FOR: Executive Officer, DD/P

SUBJECT: Allowances - [REDACTED] 25X1A2e 25X1A2g

REFERENCE: Memo to C/DDP-Admin fr IOB re above subj
dtd 16 July 54 prior to submission to DCI

25X1A2e 1. This will acknowledge receipt of your request for my views on the legal aspects of the claim by IO Division that Mr. [REDACTED] be allowed to retain the allowances paid to him by his cover organization.

25X1A2e 2. Mr. [REDACTED] is a staff agent and as such is entitled to the normal emoluments which accrue to Government employees. He is also subject to the normal limitations of such service. I know of no Federal statute or rule of law which will allow payment of subsistence allowances to Federal employees assigned to stations in the United States. The allowances listed by Mr. [REDACTED] in his memorandum of April 28, 1953, to [REDACTED], are of a type permitted by law to be paid by virtue of overseas service and similar allowances are authorized by law to be paid by CIA for such service. As such, therefore, they are inapplicable to the present case.



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4. The 10 Division memorandum reports Mr. [REDACTED]'s feeling that his position is legally justified on the ground that he was promised the allowance by responsible officials of the Agency in advance of his employment and that formal approval of the allowances by [REDACTED] was made with the concurrence of the responsible Agency representative. Such a statement, while entitled to sympathetic consideration, cannot be made the legal basis for retention of an erroneous payment. It is a settled principle that the United States is not bound or estopped by an erroneous payment made by its officers, with or without jurisdiction, and whether made under mistake of fact or of law. The application of this principle requires the United States, without regard to the circumstances surrounding the erroneous payment, to attempt to recover it from its recipient.

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5. In view of the above, it is my opinion that the payments in question were made contrary to law. In view of the fact that there is no outside audit of unvouchered funds, it is true that the DCI has the power to authorize the write-off of the obligation of Mr. [REDACTED] to repay. If the payments were brought to light and were reviewed by an office such as the General Accounting Office, collection efforts could still be instituted against Mr. [REDACTED], and in my opinion, would be successful.

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LAWRENCE R. HOUSTON
General Counsel

OCC/LRH/TMF:afb

Distribution:

- Orig & 1 - Addressee
- 1 - chrono
- 1 ✓ subject
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- 1 - [REDACTED]

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